

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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KATHLEEN WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2:09-cv-2687-JPM-dkv
	)	
	)	
DELTA AIRLINES, INC., Successor to	)	
NORTHWEST AIRLINES, INC., and	)	
NORTHWEST AIRLINES, INC.	)	
	)	
Defendants.	)	
	)	

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REPORT AND RECOMMENDATION ON DR. JAMES HUGH WEBB'S MOTION FOR  
PROTECTIVE ORDER AND SANCTIONS

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Before the court is the November 4, 2010 motion of James Hugh Webb, M.D. ("Dr. Webb"), pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, for a protective order and sanctions against the plaintiff, Kathleen Wilson, for filing a Rule 35 motion for physical and mental examination of Dr. Webb, a non-party to this case. Dr. Webb seeks an entry of an order protecting him from a physical and mental examination and from any further harassment or requests for discovery by Wilson. Dr. Webb also seeks an award of attorney fees and expenses incurred in bringing this motion. The motion for protective order and sanctions was referred to United States Magistrate Judge for a report and recommendation.

On October 13, 2010, Wilson filed a motion for a physical and mental examination of Dr. Webb, pursuant to Rule 35. (Pl.'s Mot.,

D.E. 78, Oct. 13, 2010.) Dr. Webb responded by opposing the motion on grounds that a Rule 35 examination does not apply to non-parties and filed a motion for protective order and the imposition of sanctions against Wilson. (Dr. Webb's Resp., D.E. 81, Nov. 4, 2010.) Five days after Dr. Webb submitted his response, Wilson filed notice with the court of her withdrawal of the October 13, 2010 motion for a Rule 35 physical and mental examination of Dr. Webb. (Pl.'s Notice, D.E. 85, Nov. 9, 2010.)

Dr. Webb specifically requests the court to enter a protective order, pursuant to Rule 26(c), against Wilson to prohibit his physical and mental examination and from "any further harassment or requests for discovery by Plaintiff." Because Wilson has withdrawn his motion requesting a physical and mental examination of Dr. Webb, Dr. Webb's motion for a protective order seeking to prohibit the examination is moot. However, a protective order should be granted to the extent that Dr. Webb seeks to prohibit Wilson from propounding discovery to him as a party defendant.

As such, the court recommends that Dr. Webb's motion seeking a protective order be granted in part.

In addition to seeking a protective order, Dr. Webb requests reasonable expenses including attorney fees under Rule 37. The court has the authority under Rule 26(c)(3) to award expenses under Rule 37 when granting a protective order. FED.R.CIV.P. 26(c)(3). Rule 37(a)(5)(A) provides, in relevant part, that if a motion is

granted, "the court must . . . require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." FED.R.CIV.P. 37(a)(5)(A). The imposition of expenses against Wilson, including attorney fees, is warranted to compensate Dr. Webb for the expenses incurred in bringing this motion.

Accordingly, the court recommends that Dr. Webb's motion for attorney fees be granted.

RECOMMENDATION

For the reasons expressed above, it is recommended that Dr. Webb's motion for a protective order be granted in part and that his motion for sanctions be granted.

Respectfully submitted this 16th day of November, 2010.

s/Diane K. Vescovo  
DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE